

AMENDED IN SENATE APRIL 30, 2013

**SENATE BILL**

**No. 732**

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**Introduced by Senator Berryhill**

February 22, 2013

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An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 732, as amended, Berryhill. Sales and use taxes: exclusion: trade-in-~~motor~~ *passenger* vehicle.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”

This bill would exclude from the terms “gross receipts” and “sales price” the value of a ~~motor~~ *passenger* vehicle traded in for a new ~~motor~~ *passenger* vehicle, including a new ~~motor~~ *cycle pickup truck*, if the value of the trade-in-~~motor~~ *passenger* vehicle is separately stated on the new motor vehicle invoice or bill of sale or similar document provided to the purchaser.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6011 of the Revenue and Taxation Code  
2     is amended to read:  
3     6011. (a) "Sales price" means the total amount for which  
4     tangible personal property is sold or leased or rented, as the case  
5     may be, valued in money, whether paid in money or otherwise,  
6     without any deduction on account of any of the following:  
7     (1) The cost of the property sold.  
8     (2) The cost of materials used, labor or service cost, interest  
9     charged, losses, or any other expenses.  
10    (3) The cost of transportation of the property, except as excluded  
11    by other provisions of this section.  
12    (b) The total amount for which the property is sold or leased or  
13    rented includes all of the following:  
14    (1) Any services that are a part of the sale.  
15    (2) Any amount for which credit is given to the purchaser by  
16    the seller.  
17    (3) The amount of any tax imposed by the United States upon  
18    producers and importers of gasoline and the amount of any tax  
19    imposed pursuant to Part 2 (commencing with Section 7301) of  
20    this division.  
21    (c) "Sales price" does not include any of the following:  
22    (1) Cash discounts allowed and taken on sales.  
23    (2) The amount charged for property returned by customers  
24    when that entire amount is refunded either in cash or credit, but  
25    this exclusion shall not apply in any instance when the customer,  
26    in order to obtain the refund, is required to purchase other property

1 at a price greater than the amount charged for the property that is  
2 returned. For the purpose of this section, refund or credit of the  
3 entire amount shall be deemed to be given when the purchase price  
4 less rehandling and restocking costs are refunded or credited to  
5 the customer. The amount withheld for rehandling and restocking  
6 costs may be a percentage of the sales price determined by the  
7 average cost of rehandling and restocking returned merchandise  
8 during the previous accounting cycle.

9 (3) The amount charged for labor or services rendered in  
10 installing or applying the property sold.

11 (4) (A) The amount of any tax (not including, however, any  
12 manufacturers' or importers' excise tax, except as provided in  
13 subparagraph (B)) imposed by the United States upon or with  
14 respect to retail sales whether imposed upon the retailer or the  
15 consumer.

16 (B) The amount of manufacturers' or importers' excise tax  
17 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
18 Code for which the purchaser certifies that he or she is entitled to  
19 either a direct refund or credit against his or her income tax for  
20 the federal excise tax paid or for which the purchaser issues a  
21 certificate pursuant to Section 6245.5.

22 (5) The amount of any tax imposed by any city, county, city  
23 and county, or rapid transit district within the State of California  
24 upon or with respect to retail sales of tangible personal property,  
25 measured by a stated percentage of sales price or gross receipts,  
26 whether imposed upon the retailer or the consumer.

27 (6) The amount of any tax imposed by any city, county, city  
28 and county, or rapid transit district within the State of California  
29 with respect to the storage, use, or other consumption in that city,  
30 county, city and county, or rapid transit district of tangible personal  
31 property measured by a stated percentage of sales price or purchase  
32 price, whether the tax is imposed upon the retailer or the consumer.

33 (7) Separately stated charges for transportation from the  
34 retailer's place of business or other point from which shipment is  
35 made directly to the purchaser, but the exclusion shall not exceed  
36 a reasonable charge for transportation by facilities of the retailer  
37 or the cost to the retailer of transportation by other than facilities  
38 of the retailer. However, if the transportation is by facilities of the  
39 retailer, or the property is sold for a delivered price, this exclusion

1 shall be applicable solely with respect to transportation which  
2 occurs after the purchase of the property is made.

3 (8) Charges for transporting landfill from an excavation site to  
4 a site specified by the purchaser, either if the charge is separately  
5 stated and does not exceed a reasonable charge or if the entire  
6 consideration consists of payment for transportation.

7 (9) The amount of any motor vehicle, mobilehome, or  
8 commercial coach fee or tax imposed by and paid to the State of  
9 California that has been added to or is measured by a stated  
10 percentage of the sales or purchase price of a motor vehicle,  
11 mobilehome, or commercial coach.

12 (10) (A) The amount charged for intangible personal property  
13 transferred with tangible personal property in any technology  
14 transfer agreement, if the technology transfer agreement separately  
15 states a reasonable price for the tangible personal property.

16 (B) If the technology transfer agreement does not separately  
17 state a price for the tangible personal property, and the tangible  
18 personal property or like tangible personal property has been  
19 previously sold or leased, or offered for sale or lease, to third  
20 parties at a separate price, the price at which the tangible personal  
21 property was sold, leased, or offered to third parties shall be used  
22 to establish the retail fair market value of the tangible personal  
23 property subject to tax. The remaining amount charged under the  
24 technology transfer agreement is for the intangible personal  
25 property transferred.

26 (C) If the technology transfer agreement does not separately  
27 state a price for the tangible personal property, and the tangible  
28 personal property or like tangible personal property has not been  
29 previously sold or leased, or offered for sale or lease, to third  
30 parties at a separate price, the retail fair market value shall be equal  
31 to 200 percent of the cost of materials and labor used to produce  
32 the tangible personal property subject to tax. The remaining amount  
33 charged under the technology transfer agreement is for the  
34 intangible personal property transferred.

35 (D) For purposes of this paragraph, “technology transfer  
36 agreement” means any agreement under which a person who holds  
37 a patent or copyright interest assigns or licenses to another person  
38 the right to make and sell a product or to use a process that is  
39 subject to the patent or copyright interest.

1 (11) The amount of any tax imposed upon diesel fuel pursuant  
2 to Part 31 (commencing with Section 60001).

3 (12) (A) The amount of tax imposed by any Indian tribe within  
4 the State of California with respect to a retail sale of tangible  
5 personal property measured by a stated percentage of the sales or  
6 purchase price, whether the tax is imposed upon the retailer or the  
7 consumer.

8 (B) The exclusion authorized by subparagraph (A) shall only  
9 apply to those retailers who are in substantial compliance with this  
10 part.

11 ~~(13) The value of a motor vehicle traded in for a new motor~~  
12 ~~vehicle, including a new motorcycle, if the value of the trade-in~~  
13 ~~motor vehicle is separately stated on the new motor vehicle invoice~~  
14 ~~or bill of sale or similar document provided to the purchaser.~~

15 *(13) The value of a passenger vehicle traded in for a new*  
16 *passenger vehicle, including a new pickup truck, if the value of*  
17 *the trade-in passenger vehicle is separately stated on the new*  
18 *passenger vehicle invoice or bill of sale or similar document*  
19 *provided to the purchaser.*

20 (A) For purposes of this paragraph:

21 (i) “Passenger vehicle” means passenger vehicle as defined by  
22 Section 34710 of the Vehicle Code.

23 (ii) “Pickup truck” means a pickup truck as defined by Section  
24 471 of the Vehicle Code.

25 (B) Notwithstanding clause (i) of subparagraph (A), “passenger  
26 vehicle” shall include a passenger vehicle equipped with  
27 four-wheel drive.

28 SEC. 2. Section 6012 of the Revenue and Taxation Code is  
29 amended to read:

30 6012. (a) “Gross receipts” mean the total amount of the sale  
31 or lease or rental price, as the case may be, of the retail sales of  
32 retailers, valued in money, whether received in money or otherwise,  
33 without any deduction on account of any of the following:

34 (1) The cost of the property sold. However, in accordance with  
35 any rules and regulations as the board may prescribe, a deduction  
36 may be taken if the retailer has purchased property for some other  
37 purpose than resale, has reimbursed his or her vendor for tax which  
38 the vendor is required to pay to the state or has paid the use tax  
39 with respect to the property, and has resold the property prior to  
40 making any use of the property other than retention, demonstration,

1 or display while holding it for sale in the regular course of business.  
2 If that deduction is taken by the retailer, no refund or credit will  
3 be allowed to his or her vendor with respect to the sale of the  
4 property.

5 (2) The cost of the materials used, labor or service cost, interest  
6 paid, losses, or any other expense.

7 (3) The cost of transportation of the property, except as excluded  
8 by other provisions of this section.

9 (4) The amount of any tax imposed by the United States upon  
10 producers and importers of gasoline and the amount of any tax  
11 imposed pursuant to Part 2 (commencing with Section 7301) of  
12 this division.

13 (b) The total amount of the sale or lease or rental price includes  
14 all of the following:

15 (1) Any services that are a part of the sale.

16 (2) All receipts, cash, credits, and property of any kind.

17 (3) Any amount for which credit is allowed by the seller to the  
18 purchaser.

19 (c) "Gross receipts" do not include any of the following:

20 (1) Cash discounts allowed and taken on sales.

21 (2) Sale price of property returned by customers when that entire  
22 amount is refunded either in cash or credit, but this exclusion shall  
23 not apply in any instance when the customer, in order to obtain  
24 the refund, is required to purchase other property at a price greater  
25 than the amount charged for the property that is returned. For the  
26 purpose of this section, refund or credit of the entire amount shall  
27 be deemed to be given when the purchase price less rehandling  
28 and restocking costs are refunded or credited to the customer. The  
29 amount withheld for rehandling and restocking costs may be a  
30 percentage of the sales price determined by the average cost of  
31 rehandling and restocking returned merchandise during the  
32 previous accounting cycle.

33 (3) The price received for labor or services used in installing or  
34 applying the property sold.

35 (4) (A) The amount of any tax (not including, however, any  
36 manufacturers' or importers' excise tax, except as provided in  
37 subparagraph (B)) imposed by the United States upon or with  
38 respect to retail sales whether imposed upon the retailer or the  
39 consumer.

1 (B) The amount of manufacturers' or importers' excise tax  
2 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
3 Code for which the purchaser certifies that he or she is entitled to  
4 either a direct refund or credit against his or her income tax for  
5 the federal excise tax paid or for which the purchaser issues a  
6 certificate pursuant to Section 6245.5.

7 (5) The amount of any tax imposed by any city, county, city  
8 and county, or rapid transit district within the State of California  
9 upon or with respect to retail sales of tangible personal property  
10 measured by a stated percentage of sales price or gross receipts  
11 whether imposed upon the retailer or the consumer.

12 (6) The amount of any tax imposed by any city, county, city  
13 and county, or rapid transit district within the State of California  
14 with respect to the storage, use, or other consumption in that city,  
15 county, city and county, or rapid transit district of tangible personal  
16 property measured by a stated percentage of sales price or purchase  
17 price, whether the tax is imposed upon the retailer or the consumer.

18 (7) Separately stated charges for transportation from the  
19 retailer's place of business or other point from which shipment is  
20 made directly to the purchaser, but the exclusion shall not exceed  
21 a reasonable charge for transportation by facilities of the retailer  
22 or the cost to the retailer of transportation by other than facilities  
23 of the retailer. However, if the transportation is by facilities of the  
24 retailer, or the property is sold for a delivered price, this exclusion  
25 shall be applicable solely with respect to transportation which  
26 occurs after the sale of the property is made to the purchaser.

27 (8) Charges for transporting landfill from an excavation site to  
28 a site specified by the purchaser, either if the charge is separately  
29 stated and does not exceed a reasonable charge or if the entire  
30 consideration consists of payment for transportation.

31 (9) The amount of any motor vehicle, mobilehome, or  
32 commercial coach fee or tax imposed by and paid to the State of  
33 California that has been added to or is measured by a stated  
34 percentage of the sales or purchase price of a motor vehicle,  
35 mobilehome, or commercial coach.

36 (10) (A) The amount charged for intangible personal property  
37 transferred with tangible personal property in any technology  
38 transfer agreement, if the technology transfer agreement separately  
39 states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

~~(13) The value of a motor vehicle traded in for a new motor vehicle, including a new motorcycle, if the value of the trade-in motor vehicle is separately stated on the new motor vehicle invoice or bill of sale or similar document provided to the purchaser.~~

*(13) The value of a passenger vehicle traded in for a new passenger vehicle, including a new pickup truck, if the value of*



1 *the trade-in passenger vehicle is separately stated on the new*  
2 *passenger vehicle invoice or bill of sale or similar document*  
3 *provided to the purchaser.*

4 (A) *For purposes of this paragraph:*

5 (i) *“Passenger vehicle” means passenger vehicle as defined by*  
6 *Section 34710 of the Vehicle Code.*

7 (ii) *“Pickup truck” means a pickup truck as defined by Section*  
8 *471 of the Vehicle Code.*

9 (B) *Notwithstanding clause (i) of subparagraph (A), “passenger*  
10 *vehicle” shall include a passenger vehicle equipped with*  
11 *four-wheel drive.*

12 For purposes of the sales tax, if the retailers establish to the  
13 satisfaction of the board that the sales tax has been added to the  
14 total amount of the sale price and has not been absorbed by them,  
15 the total amount of the sale price shall be deemed to be the amount  
16 received exclusive of the tax imposed. Section 1656.1 of the Civil  
17 Code shall apply in determining whether or not the retailers have  
18 absorbed the sales tax.

19 SEC. 3. Notwithstanding Section 2230 of the Revenue and  
20 Taxation Code, no appropriation is made by this act and the state  
21 shall not reimburse any local agency for any sales and use tax  
22 revenues lost by it under this act.

23 SEC. 4. This act provides for a tax levy within the meaning  
24 of Article IV of the Constitution and shall go into immediate effect.  
25 However, the provisions of this act shall become operative on the  
26 first day of the first calendar quarter commencing more than 90  
27 days after the effective date of this act.